

CONSERVATORSHIP

4

Get a Permanent Appointment for an Adult

Part 4: What to do after the Court Hearing (Instruction Packet)

SELF-SERVICE CENTER
FOR APPOINTMENT OF A PERMANENT CONSERVATOR
FOR AN ADULT

PART 4: What to do after the Court Hearing
(Instructions Only)

This packet contains instructions on what to do after the court hearing for an appointment of permanent conservator for an adult. Be sure the documents are in the following order:

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SELF-SERVICE CENTER

PROCEDURES: WHAT TO DO AFTER THE COURT HEARING CONSERVATORSHIP-OF AN ADULT

STEP 1 What to do after the hearing is over:

A. GO TO THE CLERK, PROBATE REGISTER. If the Judge/Commissioner grants the PETITION FOR APPOINTMENT OF A CONSERVATOR, you will need to take the **originals** of the following:

- THE ORDER OF APPOINTMENT OF A CONSERVATOR,
- THE LETTERS, **AND**
- THE ACCEPTANCE OF THE LETTERS.

When you take the documents listed above, the clerk will:

- Review the ORDER OF APPOINTMENT,
- Complete the LETTERS,
- Have you sign the ACCEPTANCE, **AND**
- File the originals.

Note: You should ask the Clerk to certify a copy of the LETTERS to prove that you have the appointment and authority from the court. There is an **\$18.00 certification fee plus \$0.50 per page** to do this.

B. BOND: If the Judge/Commissioner did not waive the bond and ordered that you post a bond for a certain amount, call bonding company, purchase the bond, and file the original bond with the court. **DO THIS IMMEDIATELY** after the order is signed, because no LETTERS will be issued without the bond.

C. LETTERS OF APPOINTMENT. Keep a **certified copy** of the LETTERS to show anyone who needs to know that you have authority from the court to act as conservator, and what that authority is.

D. ORDER OF APPOINTMENT. Keep a copy of this to remember what the Judge/Commissioner ordered you to do in this case.

E. ORDER TO CONSERVATORS. Keep a copy of this Order and read it often. This ORDER contains the general instructions about what you are required to do as conservator. Be sure you know your obligations, and what you are required to do under the law.

If for some reason the Court did not waive the bond and ordered you to post a bond and to file an ANNUAL ACCOUNTING, you are required to do the following:

A. INVENTORY AND APPRAISEMENT and PROOF OF MAILING

INVENTORY AND APPRAISEMENT: File this document no later than **90 days** after appointment, to list all the assets and debts of the protected person, and to show how you will care for the person's finances.

Note: Mail a copy to the protected person and to other interested persons.

B. ANNUAL ACCOUNTING and PETITION FOR APPROVAL OF ANNUAL ACCOUNTING: You must file these documents **every year on or before the anniversary date** of the ORDER OF APPOINTMENT AS CONSERVATOR.

Note: The Accounting must be approved by the Judge/Commissioner.

- When you want to be discharged as conservator, you must file a PETITION FOR APPROVAL and A FINAL ACCOUNTING. These forms are available at the Self-Service Center in the packet called ***Petition for Approval of Annual Accounting***.

C. PROOF OF RESTRICTED ACCOUNT: If the Judge ordered you to put some or all of the person's money into a restricted account, obey this Order right away. Then file the PROOF OF RESTRICTED ACCOUNT signed by the manager at the bank or financial institution that will show the account was properly established.

D. ESTATE MANAGEMENT PLAN: If you are required to file an ANNUAL ACCOUNTING AS CONSERVATOR, file the ESTATE MANAGEMENT PLAN **no later than 90** days after the court Order and every time you file an Accounting. Mail a copy to the person's attorney, too.

E. FEE STATEMENT: If you are charging a fee to be the conservator, or trustee, you must fill out the FEE STATEMENT and file it with the court..

SELF-SERVICE CENTER
PROCEDURES REGARDING
PROOF BY DEPOSITORY OF RESTRICTED ACCOUNT
(CONSERVATORSHIP)

1. **WHEN YOU NEED A PROOF BY DEPOSITORY:** If you are a conservator of a ward's money, you might have asked the Judge/Commissioner to order that some or all of the assets be restricted. If the Judge/Commissioner granted the restriction, you need to prove to the Judge/Commissioner that you obeyed the Order and had the assets placed in a restricted account. This court document is called the PROOF OF RESTRICTED ACCOUNT.
 2. **WHEN AND HOW TO GET A "PROOF OF RESTRICTED ACCOUNT:**
Immediately after the Judge/Commissioner orders the restriction, take the money to a bank or other financial institution and inform the manager or staff that:
 - You are a conservator under court order. Bring with you a **certified copy** of the LETTERS OF APPOINTMENT.
 - You want the money placed in a restricted account as stipulated by the ORDER. Bring a copy of the ORDER authorizing the restriction. There are certain terms in the ORDER you and the financial institution need to obey.
 - After the money is deposited in a restricted account, have the bank or financial institution manager sign the PROOF OF RESTRICTED ACCOUNT, which must also be notarized. **Keep the original to give it to the court.**
 3. **FILING THE PROOF BY DEPOSITORY:** After the PROOF OF RESTRICTED ACCOUNT is signed and notarized, file the original with the **Clerk of the Court, Probate Registrar**. You should also send a copy to **Probate Court Administration**.
- Note:** You should also send a copy to the office of the Judge/Commissioner who signed the Order for the restricted account.
4. **WHAT ABOUT THE BOND:** Once the account is established and the PROOF OF RESTRICTED ACCOUNT is filed, you might qualify to have the bond reduced or dissolved, depending on the estate and what the ORDER said. If so, you might need an extra **conformed (date-stamped) copy** of the PROOF OF RESTRICTED indicating that the restricted account is established and the proof is filed in the court records.
 5. **OTHER HELP:** If you still have questions about this procedure, you can ask a lawyer for legal advice. You can look up a lawyer in the telephone book under "attorneys." Also, the Self-Service Center has a list of lawyers who will help you help yourself. The list shows where the lawyers are located, how much they charge, and what their experience is.

SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY
PROBATE/MENTAL HEALTH DEPARTMENT

FIDUCIARY FEE GUIDELINES
OCTOBER 1994

A. SUGGESTED FEE SCHEDULE

Service Provided

Fee Allowed

- | | |
|--|--------------------------------------|
| 1. Setup fee for a guardian, conservator, or guardian/conservator for referral, investigation, and setup, allowed in the first year only. | \$600 total
(Allowed once) |
| 2. Annual fee for a guardian for annual client contact with the ward or protected person based upon monthly personal contact by the fiduciary or an employee trained in social work. (See note D regarding fees for companionship services.) | \$900/annually |
| 3. Annual fee for a conservator for estates of \$100,000 or less, plus .2% of the average value of the estate for the year in excess of \$100,000. | \$300/annually
plus .2% |
| 4. Check writing fee for a conservator for each check written in excess of 5 checks per month. No charge will be allowed for the first 5 checks written each month. There shall be no charge for checks written to the fiduciary and the fiduciary's attorney and these shall not be counted toward meeting the "first five free" provision. | \$10 per check |
| 5. Management fee for a conservator, generally not to exceed 3% annually of total receipts and disbursements. Neither the fiduciary's fee nor the fiduciary's attorney's fee shall be included in the disbursement total. The fiduciary's expertise, amount of work and investment performance will all be considered in determining the amount of the management fee. (This fee is in addition to the annual fee.) | Not to exceed 3% |

NOTES:

- A. Extraordinary fees must be justified by a showing of necessity and billed at a reasonable hourly rate.
- B. Extraordinary costs must be necessary, reasonable, and documented.
- C. Any anticipated extraordinary fees must be explained in the estate management plan and on the fiduciary's itemized fee statement and affidavit.
- D. Companionship services should not exceed \$15.00 an hour plus mileage at \$0.29/mile. These are companionship services over and above the once monthly social worker contact already covered by the annual fee for guardian. (See #2 under suggested fee schedule.)
- E. Contract or "out-sourced" services (those services not performed by an employee of the fiduciary) provided to the ward or protected person for such things as accounting services, tax preparation, visitation, guardianship services, investment management and bookkeeping shall be billed to the ward in the same amount as paid by the fiduciary for each such service.

The Court does not endorse the practice of a fiduciary "marking up" or adding a profit margin to services which the fiduciary does not provide with the fiduciary's own employees. For example, if the fiduciary used an outside accountant to prepare the accounting for a fee of \$250.00, the fiduciary is allowed to charge the ward only the \$250.00. The fiduciary is allowed to charge for any related services provided by the fiduciary such as supervision or monitoring of the contract service provider.

B. FIDUCIARY DUTIES - FIRST YEAR TYPICAL SERVICES

1. Pre-Court Appointment

- a. Meet prospective client and assess client's physical and mental status, need for guardianship, conservatorship, or both; assess placement needs.
- b. Contact family/friends regarding referral, prospective client's status, possible court proceedings, and willingness to serve.
- c. Obtain financial information. (When the referral is from Adult Protective Services or an attorney, this information is usually complete. If the referral is from another source, such as a hospital social worker, this information may be incomplete.) You may need to establish a relationship with the prospective client to review client financial records. (Financial records may be in "good condition" or in bags, boxes, and under beds.)
- d. Contact physician for medical opinion and to obtain medical report. (May require taking prospective client to physician's office).
- e. Meet with attorney to provide case information and begin legal proceedings.
- f. Monitor prospective client (when necessary) pending court proceedings.

2. Obtain Court Appointment

- a. Attend hearing.
- b. Obtain surety bond.
- c. Obtain certified copies of Letters.

3. Post Court Appointment

- a. Record Letters, if there is real property.
- b. Change the mailing address for client's mail.
- c. Obtain all insurance information.
- d. Contact all financial institutions to close accounts, transfer funds, supersede on accounts, restrict accounts and change mailing address for statements, etc.
- e. Change Payee for Social Security payments.
- f. Contact all sources of income to change mailing addresses.
- g. Contact all medical insurance companies and other insurance companies to obtain information on coverage and to change mailing address.
- h. If real property, obtain condition of title report and appraisal, if necessary.
- i. If real property, contact Assessor and County Treasurer to change mailing address of all records.
- j. If there is an automobile, obtain title or duplicate title and check liability insurance coverage.
- k. If stocks and bonds, either transfer into street name in a brokerage account or change mailing addresses on all issues. Obtain "basis" information when possible.
- l. If furniture/personal property, list and obtain appraisal when necessary.
- m. Determine tax status, obtain copies of prior years' returns.
- n. Determine testamentary status, obtain original or copy of will.
- o. Determine funeral arrangements.
- p. Obtain information required for death certificate.
- q. Prepare inventory for filing with court.

4. Nursing Home Placement. Supervise and coordinate client's needs.

- a. Medical, dental and optical appointments.
- b. Medical treatments.
- c. Medication.
- d. Social and emotional needs.
- e. Clothing and personal items.

C. FIDUCIARY DUTIES - EXTRAORDINARY SERVICES

1. Home Placement (Provide 24 Hours On Call Services)

- a. Obtain staff.
- b. Supervise staff.
- c. Schedule staff.
- d. Prepare payroll.
 - i. Compute withholdings on paychecks.
 - ii. Prepare quarterly and yearly reports.
 - iii. Obtain workers' compensation coverage.
 - iv. Obtain unemployment coverage.
- e. Maintain house.
- f. Maintain auto, if necessary.
- g. Oversee household monies.
 - i. Obtain receipts.
 - ii. Reconcile monthly.
- h. Supervise and coordinate client's personal needs.
 - i. Nutrition.
 - ii. Hair appointments.
 - iii. Medication.
 - iv. Medical treatments.

2. Adult Foster Care Placement: Supervise and Coordinate Client's Needs.

- a. Medical, dental, and optical appointments.
- b. Medical treatments.
- c. Medication.
- d. Social and emotional needs.
- e. Clothing and personal items.

3. Companionship Services (See Notes D and E above regarding charges)

- a. Social visits.
- b. Accompany for lunch, walks, shopping.
- c. Prepare correspondence.
- d. Routine physician visits or follow-up and status reporting.

D. FACTORS THAT MAY MAKE FIDUCIARY SERVICES EXTRAORDINARY

- 1. Review of papers and documents, which are in disarray, to identify and locate assets.
- 2. Notification of banks and financial institutions of estate status.
- 3. Obtaining insurance record information.
- 4. Sorting through boxes or files for information.
- 5. Degree of ease in accessing information.
- 6. Sizeable number of financial institutions to contact.
- 7. Family disagreement or dissention.
- 8. Character and values of family members, business associates of the ward and others.
- 9. Level of cooperation from client/ward.
- 10. Medical or placement crisis with the ward.
- 11. Level of monitoring required by ward.

E. CHECKLIST FOR EVALUATION OF FEES (for evaluation of cases with fees in question)

- 1. What are the total administrative expenses? Attorney's fees, fiduciary fees, accountant, investment advisor, tax preparation, etc.
- 2. What is the make-up of the estate and its gross value? Cash, stocks, bonds, a business, real estate, art, antiques, collections.

3. What is the estate income?
4. What kind of management of assets was required?
5. Did real estate require more than routine management?
6. Did a business have to be run?
7. Who performed the various tasks? Were the tasks appropriate to the person performing them? Were billed tasks performed by an attorney which could have been performed by a paralegal, secretary, runner, accountant?
8. Was the time spent on any task excessive?
9. Were the tasks performed necessary? (In a probate, for example, could the property have been distributed by affidavit? Was a formal, court-approved accounting necessary?)
10. In a guardianship or conservatorship, what aspects of the ward's condition required unusual time and effort?
11. Who are the relatives/heirs/devisees? Did contentiousness among interested persons cause unusual expenditures of time and effort?
12. Is the hourly rate acceptable?
13. Are the attorney's and fiduciary's records of time spent and tasks performed complete and specific?
14. Are there duplications of time?
15. Was research billed in areas which should not have required research?
16. Are there steps an attorney should have taken to eliminate the need for litigation or unusual activities? A recent memorandum decision reverses a trial court's allowance of fees in a conservatorship because the attorney did not act "with reasonable care to avoid the unnecessary use of his service by the guardian and conservator". The attorney billed for services necessitated by the conservator's failure to perform and the attorney was therefore in breach of his fiduciary duties under Fickett because he did not act quickly to have the conservator (his client) removed. In the Matter of the Guardianship and Conservatorship of Harsh, Maricopa County Public Fiduciary v Finks, 1 CA-CV 92-0118 (1994).
17. Are the persons who received a copy of the accounting or petition for fees sufficiently competent or sophisticated to object, or is their interest (financial or otherwise) such that it's not worth the hassle?